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No. ———

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E. ROBERT SEAVER

In the Supreme Court of the United States

OCTOBER TERM, 1970

UNITED STATES OF AMERICA, APPELLANT

v.

DANIEL B. BREWSTER

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

ERWIN N. GRISWOLD,
Solicitor General,

WILL WILSON,
Assistant Attorney General,

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OPINION BELOW

The district court did not deliver a written opinion. Its oral opinion is set out in Appendix A, *infra* p. 8.

JURISDICTION AND STATEMENT

On October 9, 1970, a judge of the United States District Court for the District of Columbia orally granted respondent's pre-trial motion to dismiss counts 1, 3, 5, 7, and 9 of a ten-count indictment charging respondent, a former United States Senator,

with soliciting and receiving bribes in amounts totalling $24,500 from Cyrus T. Anderson, the Washington, D. C. lobbying representative of Spiegel, Inc., a large mail order company, in violation of 18 U.S.C. 201(c)(1) and 18 U.S.C. 201(g). The indictment is set forth in Appendix D, *infra* pp. 12-19.[1] The essence of the charges was that respondent, during his tenure as a Senator, accepted bribes in return for influence in the performance of official acts as a member of the Senate and the Senate Committee on the Post Office and Civil Service with regard to votes and other legislative actions on postal legislation. The district judge ruled that the speech or debate clause of the Constitution (Art. I, Sec. 6) shielded respondent "from any prosecution for alleged bribery to perform a legislative act" (Appendix A, *infra* p. 8).

The district court's formal order of dismissal was entered on November 3, 1970 (Appendix B, *infra* p. 9). A notice of appeal to this Court was filed in the district court on November 4, 1970, under 18 U.S.C. 3731 (Appendix C, *infra* pp. 10-11).

This Court has jurisdiction, under 18 U.S.C. 3731, over a direct appeal from the decision or judgment of a district court dismissing an indictment or count thereof based upon the invalidity of the statute upon which the indictment is founded. See, *e.g.*, *United*

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[1] Counts 1, 3, 5, and 7 charged the offense under Section 201(c)(1); count 9 charged a violation of Section 201(g). The remaining counts of the ten-count indictment charged Cyrus Anderson and Spiegel, Inc. with offering and giving the bribes, in violation of 18 U.S.C. 201(b).

States v. *Spector*, 343 U.S. 169; *United States* v. *Petrillo*, 332 U.S. 1.[2]

QUESTION PRESENTED

Whether the Constitution, particularly Article I, Section 6, providing that "for any Speech or Debate in either House, [members of Congress] shall not be questioned in any other Place," bars criminal prosecution of a Senator under express statutory provisions making it a crime for a member of Congress to accept a bribe in exchange for the performance of legislative acts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 6 of the Constitution provides in pertinent part:

> * * * for any Speech or Debate in either House, they [Senators or Representatives] shall not be questioned in any other Place.

18 U.S.C. 201(a) provides in part:

> (a) For the purpose of this section:
>
> "public official" means Member of Congress, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States,

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[2] Alternatively, if the district judge's action is viewed as the granting of a "motion in bar," see *United States* v. *Covington*, 395 U.S. 57, 59, this Court also has jurisdiction over the appeal under 18 U.S.C. 3731, since the motion was granted before the attachment of jeopardy.

or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

* * * *

18 U.S.C. 201(c)(1) provides:

(c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:

(1) being influenced in his performance of any official act; [shall be guilty of an offense]

18 U.S.C. 201(g) provides:

(g) Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him; [shall be guilty of an offense]

THE QUESTION IS SUBSTANTIAL

In *United States* v. *Johnson*, 383 U.S. 169, this Court held that, in a prosecution for conspiracy to defraud the United States under the general conspiracy statute (18 U.S.C. 371), the government was precluded by the speech or debate clause from introducing proof that a Congressman agreed to and did

deliver a speech on the floor of the House of Representatives as part of the scheme.[3] After reviewing the relevant history and precedents, the Court concluded that the principal purpose of the clause was "to prevent intimidation [of legislators] by the executive and accountability before a possibly hostile judiciary." 383 U.S. at 181; see also *Powell* v. *McCormack*, 395 U.S. 486, 502. It viewed that indictment as "focused with particularity" on the underlying motives of the Congressman for making the speech and its contents and held that his "prosecution under a general criminal statute dependent on such inquiries necessarily contravenes the Speech or Debate Clause." *Id.* at 184-185. The Court pertinently stated, however, (*id.* at 185) that

> * * * without intimating any view thereon, we expressly leave open for consideration when the case arises a prosecution which, though possibly entailing inquiry into legislative acts or motivations, is founded upon a narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members.

This case presents the issue which the Court specifically left undecided in *Johnson:* Whether Con-

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[3] The court held that a new trial could be had on the conspiracy charge with all reference to the allegation regarding the giving of the speech removed. *Id.* at 185. Subsequently, Johnson was retried and convicted on substantive conflict of interest charges involving attempts to influence the Department of Justice, and his conviction was affirmed. *United States* v. *Johnson*, 419 F. 2d 56 (C.A. 4), certiorari denied, 397 U.S. 1010.

gress may constitutionally enact a statute providing for judicial sanctions against a member who accepts a bribe for performance of a legislative act, without impinging upon the rights protected by the speech or debate clause. We believe that Congress has such constitutional power; that the statutory provisions here in question reflect a proper exercise of that power; and that the district court erred in dismissing the counts of the indictment naming respondent.

Over more than a hundred years Congress has consistently enacted legislation making it a crime for a member of Congress to accept a bribe to influence his legislative decisions. See Act of February 26, 1853, c. 81, 10 Stat. 170. In 1962, when Congress undertook a comprehensive revision of the bribery, graft, and conflict-of-interest laws, it again included its own members in the definition of "public officials" whose delicts are judicially punishable. See 18 U.S.C. 201 (a), *supra* pp. 3-4. Thus Congress has consistently proscribed bribe-taking in connection with a member's official duties without evidencing any concern that punishment of the corrupt antecedent conduct would hamper the legislative process. The manifestly important question whether it constitutionally may do so should be resolved by this Court.[4]

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[4] We note that a result consistent with the view we advocate was recently reached by Chief Judge Thomsen, in an opinion denying the motion of former Congressman Dowdy to dismiss criminal charges against him based upon bribery. *United States* v. *Dowdy, et al.* Cr. No. 70-0123. (D. of Md.) decided on July 16, 1970.

CONCLUSION

Accordingly, probable jurisdiction should be noted in this case.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

WILL WILSON,
Assistant Attorney General.

BEATRICE ROSENBERG,
ROGER A. PAULEY,
Attorneys.

NOVEMBER 1970.

APPENDIX A

OPINION OF THE COURT

THE COURT: Gentlemen, based on the facts of this case, it is admitted by the Government that the five counts of the indictment which charge Senator Brewster relate to the acceptance of bribes in connection with the performance of a legislative function by a Senator of the United States.

It is the opinion of this Court that the immunity under the Speech and Debate Clause of the Constitution, particularly in view of the interpretation given that Clause by the Supreme Court in Johnson, shields Senator Brewster, constitutionally shields him from any prosecution for alleged bribery to perform a legislative act.

I will, therefore, dismiss the odd counts of the indictment, 1, 3, 5, 7 and 9, as they apply to Senator Brewster.

I would like to expedite an appeal in this matter in any way that we can get this matter settled finally by the Supreme Court.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Crim. No. 1872-69

[Filed 11-3-70, Robert M. Stearns, Clerk]

UNITED STATES OF AMERICA

v.

DANIEL B. BREWSTER

ORDER

This matter having come before the Court for a hearing on the defendant's motion to dismiss the indictment, and such hearing having been held, it is by the Court this 3rd day of November, 1970.

ORDERED that the defendant's motion be granted, and the indictment be and hereby is dismissed as to the defendant Brewster for the reasons stated orally by the Court at the hearing on October 9, 1970.

s/ George L. Hart
Judge

A TRUE COPY
JAMES F. DAVEY

By s/ Lillian Cohen
Deputy Clerk

[SEAL]

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Crim. No. 1872-69

[Filed, 11-4-70, James F. Davey, Clerk]

UNITED STATES OF AMERICA

v.

DANIEL B. BREWSTER

NOTICE OF APPEAL

Notice is hereby given that the United States of America hereby appeals to the United States Supreme Court, pursuant to 18 U.S.C. § 3731, from the order of this Court entered November 3, 1970, dismissing the indictment herein as to the defendant, Daniel B. Brewster.

s/ Thomas A. Flannery
United States Attorney

s/ John A. Terry
Assistant
United States Attorney

s/ Donald S. Smith
Assistant
United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Notice of Appeal has been mailed to counsel for defendant, Thomas Wadden, Jr., Esquire, 888 - 17th Street, N.W., Washington, D. C. 20006, and Norman R. Ramsey, Esquire, 10 Light Street, Baltimore, Maryland, this 3d day of November, 1970.

/s/ Donald S. Smith
Assistant
United States Attorney

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on April 1, 1969

Criminal No.

Grand Jury No. Original

UNITED STATES OF AMERICA

v.

DANIEL B. BREWSTER, CYRUS T. ANDERSON,
SPIEGEL, INC.

Violation:

18 U.S.C. 201 (Bribery of Public Officials).
18 U.S.C. 2 (Aiding and Abetting)

The Grand Jury charges:

FIRST COUNT:

(1) At all times hereinafter mentioned in this indictment, Daniel B. Brewster was a public official of the United States, that is, a member of the Senate of the United States from the State of Maryland.

(2) At all times hereinafter mentioned in this indictment, Daniel B. Brewster, in his capacity as a United States Senator, served as a member of the Committee on Post Office and Civil Service of the Senate of the United States.

(3) At all times hereinafter mentioned in this indictment, the Senate of the United States, pursuant to Standing Rule 25.1(n)(3), referred all proposed legislation relating to the postal service to the standing Committee on Post Office and Civil Service.

(4) During the First Session of the Ninetieth Congress, the Congress of the United States was considering legislation to adjust postage rates.

(5) At all times hereinafter mentioned in this indictment, Spiegel, Inc., a Delaware corporation, was engaged in the sale of merchandise, principally by mail and through catalogs.

(6) At all times hereinafter mentioned in this indictment, Cyrus T. Anderson was a lobbyist who was registered with the Secretary of the Senate and the Clerk of the United States House of Representatives and who represented Spiegel, Inc.

(7) On or about January 10, 1966, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendant

Daniel B. Brewster

being a public official of the United States, acting for and on behalf thereof, in an official function, under and by authority of the Senate of the United States, directly and indirectly, corruptly asked, solicited, sought, accepted, received and agreed to receive the sum of $5,000 for himself and for an entity, that is, the "D. C. Committee for Maryland Education", from Cyrus T. Anderson and Spiegel, Inc. in return for being influenced in his performance of official acts in respect to his action, vote, and decision on postage rate legislation which might at any time be pending before him in his official capacity and in his place of trust and profit; in violation of Sections 201 (c) (1) and 2, Title 18, United States Code.

SECOND COUNT:

(1) The Grand Jury realleges paragraphs (1) through (6), inclusive, of the First Count and incorporates them therein by reference.

(2) On or about January 10, 1966, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendants

Cyrus T. Anderson
and
Spiegel, Inc.

directly and indirectly, corruptly gave, offered and promised the sum of $5,000 to Daniel B. Brewster, a public official of the United States, acting for and on behalf thereof, in an official function, under and by the authority of the Senate of the United States, and to an entity, that is, the "D. C. Committee for Maryland Education", with the intent to influence Daniel B. Brewster's action, vote and decision on postage rate legislation which might at any time be pending before him in his official capacity and in his place of trust and profit; in violation of Sections 201(b) and 2, Title 18, United States Code.

THIRD COUNT:

(1) The Grand Jury realleges paragraphs (1) through (6) inclusive, of the First Count and incorporates them herein by reference.

(2) On or about January 16, 1967, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendant

Daniel B. Brewster

being a public official of the United States, acting for and on behalf thereof, in an official function, under and by the authority of the Senate of the United States, directly and indirectly, corruptly asked, solicited, sought, accepted, received and agreed to receive the sum of $5,000 for himself from Cyrus T. Anderson and Spiegel, Inc. in return for being

influenced in his performance of official acts in respect of his action, vote, and decision on postage rate legislation which might at any time be pending before him in his official capacity and in his place of trust and profit; in violation of Sections 201(c)(1) and 2, Title 18, United States Code.

FOURTH COUNT:

(1) The Grand Jury realleges paragraphs (1) through (6), inclusive, of the First Count and incorporates them herein by reference.

(2) On or about January 16, 1967, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendants

Cyrus T. Anderson
and
Spiegel, Inc.

directly and indirectly, corruptly gave, offered and promised the sum of $5,000 to Daniel B. Brewster, a public official of the United States, acting for and on behalf thereof, in an official function, under and by the authority of the Senate of the United States, with the intent to influence Daniel B. Brewster's action, vote and decision on postage rate legislation which might at any time be pending before him in his official capacity and in his place of trust and profit; in violation of Sections 201(b) and 2, Title 18, United States Code.

FIFTH COUNT:

(1) The Grand Jury realleges paragraphs (1) through (6), inclusive, of the First Count and incorporates them herein by reference.

(2) On or about April 27, 1967, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendant

Daniel B. Brewster

being a public official of the United States, acting for and on behalf thereof, in an official function, under and by the authority of the Senate of the United States, directly and indirectly, corruptly asked, solicited, sought, accepted, received and agreed to receive the sum of $4,500 for himself and for an entity, that is, the "D. C. Committee for Maryland Education", from Cyrus T. Anderson and Spiegel, Inc. in return for being influenced in his performance of official acts in respect to his action, vote, and decision on postage rate legislation which might at any time be pending before him in his official capacity and in his place of trust and profit; in violation of Sections 201(c)(1) and 2, Title 18, United States Code.

SIXTH COUNT:

(1) The Grand Jury realleges paragraphs (1) through (6) inclusive, of the First Count and incorporates them herein by reference.

(2) On or about April 27, 1967, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendants

Cyrus T. Anderson
and
Spiegel, Inc.

directly and indirectly, corruptly gave, offered and promised the sum of $4,500 to Daniel B. Brewster, a public official of the United States, acting for and on behalf thereof, in an official function, under and by the authority of the Senate of the United States, and to an entity, that is, the "D. C. Committee for Maryland Education", with the intent to influence

Daniel B. Brewster's action, vote and decision on postage rates legislation which might at any time be pending before him in his official capacity and in his place of trust and profit; in violation of Sections 201(b) and 2, Title 18, United States Code.

SEVENTH COUNT:

(1) The Grand Jury realleges paragraphs (1) through (6) inclusive, of the First Count and incorporates them herein by reference.

(2) On or about July 19, 1967, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendant

Daniel B. Brewster

being a public official of the United States, acting for and on behalf thereof, in an official function, under and by the authority of the Senate of the United States, directly and indirectly, corruptly asked, demanded, exacted, solicited, sought, accepted, received and agreed to receive the sum of $5,000 for himself and for an entity, that is, the "D. C. Committee for Maryland Education", from Cyrus T. Anderson and Spiegel, Inc. in return for being influenced in his performance of official acts in respect to his action, vote, and decision on postage rate legislation which might at any time be pending before him in his official capacity and in his place of trust and profit; in violation of Sections 201(c)(1) and 2, Title 18, United States Code.

EIGHTH COUNT:

(1) The Grand Jury realleges paragraphs (1) through (6), inclusive, of the First Count and incorporates them herein by reference.

(2) On or about July 19, 1967, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendants

Cyrus T. Anderson
and
Spiegel, Inc.

directly and indirectly, corruptly gave, offered and promised the sum of $5,000 to Daniel B. Brewster, a public official of the United States, acting for and on behalf thereof, in an official function, under and by the authority of the Senate of the United States, and to an entity, that is, the "D. C. Committee for Maryland Education", with the intent to influence Daniel B. Brewster's action, vote and decision on postage rate legislation which might at any time be pending before him in his official capacity and in his place of trust and profit; in violation of Sections 201(b) and 2, Title 18, United States Code.

NINTH COUNT:

(1) The Grand Jury realleges paragraphs (1) through (6), inclusive, of the First Count and incorporates them herein by reference.

(2) On or about January 31, 1968, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendant

Daniel B. Brewster

being a public official of the United States, acting for and on behalf thereof, in an official function, under and by the authority of the Senate of the United States, directly and indirectly, asked, demanded, exacted, solicited, sought, accepted, received and agreed to receive the sum of $5,000 for himself from Cyrus T. Anderson and Spiegel, Inc. for and

because of official acts performed by him in respect to his action, vote and decision on postage rate legislation which had been pending before him in his official capacity and in his place of trust and profit; in violation of Sections 201(g) and 2, Title 18, United States Code.

TENTH COUNT:

(1) The Grand Jury realleges paragraphs (1) through (6), inclusive, of the First Count and incorporates them herein by reference.

(2) On or about January 31, 1968, the exact date being unknown to the Grand Jury, within the District of Columbia, the defendants

Cyrus T. Anderson
and
Spiegel, Inc.

directly and indirectly, gave, offered and promised the sum of $5,000 to Daniel B. Brewster, a public official of the United States, acting for and on behalf thereof, in an official function, under and by the authority of the Senate of the United States, for and because of official acts performed by Daniel B. Brewster in respect to his action, vote and decision on postage rate legislation which had been pending before him in his official capacity and in his place of trust and profit; in violation of Sections 201(f) and 2, Title 18, United States Code.

Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

Foreman.

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